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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 141. ~~15~~ 6

JOHN O'NEIL, PLAINTIFF IN ERROR,

vs.

THE STATE OF VERMONT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

FILED OCTOBER 11, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 5, 1889.

1 UNITED STATES OF AMERICA, *District of Vermont:*

To the honorable justices of the Supreme Court of the United States:

And now comes John O'Neil, of Whitehall, in the county of Washington and State of New York, by Joel C. Baker, his attorney, and complains that in the record and proceedings, and also in the rendition of a certain judgment in a suit or criminal prosecution against him as respondent, in the name of the State of Vermont, and in and before the supreme court of said State of Vermont, being the highest court of law or equity of the said State in which a decision could be had in said suit, and in which a final judgment was rendered against him on the 5th day of February, A. D. 1886, in said suit or criminal prosecution, wherein was drawn in question the validity of a statute of the State of Vermont, under which the said court held that said John O'Neil, in filling orders sent to him at his said store in said Whitehall, in the State of New York, for intoxicating liquors and sending the same by common carrier, to wit, the National Express Co., from said Whitehall to the parties ordering the same, in Vermont, with a bill for the pay for the
2 same, to be collected by said common carrier, and the money -turned to said O'Neil at his said store, was guilty of a violation of the statute law of the State of Vermont prohibiti- the sale of intoxicating liquors in said State, and in which — was claimed by said John O'Neil that said statute, if given such construction, was void as being repugnant to section 8 of article 1 of the Constitution of the United States, and that said statute was held to be valid and the authority exercised under the laws of the State of Vermont under said interpretation of said statute was sustained and held to be valid, all which appears in the record and proceedings in said suit, manifest error hath happened, to the great damage of the said John O'Neil.

Wherefore he prays for the allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

By his attorney, J. C. BAKER.

Allowed.

HOMER E. ROYCE,
Chief Justice of Supreme Court of Vermont.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Vermont, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Vermont, before you or some of you, being the highest court of law or equity of the said State in which a decision could

be had in the said suit between the State of Vermont, as prosecuting for the violation of a statute law of said State, and John O'Neil, of Whitehall, in the county of Washington and State of New York, respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or
4 statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said John O'Neil, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six.

[Seal Circuit Court, Vermont District, U. S. A.]

GEO. E. JOHNSON,
Clerk of the Circuit Court of the United States for the District of Vermont.

Allowed by—
HOMER E. ROYCE,
Chief Justice of the Supreme Court of Vermont.

5 RUTLAND, *To wit:*

[Coat of arms of Vermont.]

To all persons to whom these presents shall come, Greeting:

Seal Supreme Court, State of Vermont.

Know ye that, having inspected the records and proceedings in the office of the clerk of our supreme court of judicature for the county of Rutland, we do there find remaining certain original process and pleadings in the words and figures following, to wit:

STATE OF VERMONT, } ss:
Rutland, }

Pleas before the honorable supreme court of judicature, began and held at Rutland, within and for the county of Rutland, on the first Thursday after the fourth Tuesday of January, being the 28 day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 110th.

Present: Honorable Homer E. Royce, chief judge; Honorable H. Henry Powers, Honorable John W. Rowell, Honorable Wm. H. Walker, assistant judges.

6 STATE }
v.
JOHN O'NEIL, Ap't. }

Be it remembered that in the January term, A. D. 1884, before the supreme court of the State of Vermont, at Rutland, within and for the county of Rutland, comes John O'Neil, of Whitehall, N. Y., to wit, of Rutland aforesaid, by Baker & Howe, Esquires, his attorneys, and brings before the said supreme court, now here, a certain original judgment of the county court within and for the county of Rutland aforesaid, at the March term thereof, A. D. 1883, with his bill of exceptions thereto, duly assigned and allowed before the judges of said county court then there.

Which said judgment, proceedings, and exceptions are in the words following—that is to say:

7 STATE OF VERMONT, } ss:
Rutland County, }

Rutland County Court. March Term, 1883.

STATE }
v.
JOHN O'NEIL, Ap't. }

Be it remembered that in the March term of the county court, begun and holden at Rutland, within and for the county of Rutland, on the second Tuesday of March, A. D. 1883, cometh John O'Neil, of Whitehall, N. Y., to wit, of Rutland aforesaid, by Baker & Howe, Esquires, his attorneys, and brings into the court now here his certain copies of appeal in the words and figures following—that is to say:

8 STATE OF VERMONT, } ss:
Rutland County, }

Be it remembered that at a justice court, holden at Rutland, in the county of Rutland, before Wayne Bailey, Esq., justice of the

peace in and for said county, on the 2 day of March, 1883, John O'Neil was arrested to answer unto a complaint, as per complaint & warrant on file, in the words & figures following:

STATE OF VERMONT, } ss:
Rutland County, }

To Wayne Bailey, Esq., justice of the peace within & for the county of Rutland, comes J. P. Cain, grand juror, of the town of Rutland, in said county of Rutland, & on his oath of office complaint makes that John O'Neil, of Whitehall, N. Y., to wit, on the 25 day of December, A. D. 1882, at Rutland aforesaid, did at divers times sell, furnish, and give away intoxicating liquor without authority, contrary to the form, force, and effect of the statute in such case made and provided and against the peace and dignity of the State.

J. P. CAIN,
Grand Juror.

And the said J. P. Cain, grand juror as afores'd, comes and gives the said Wayne Bailey, justice of the peace as afores'd, to understand & be informed that the said John O'Neil, prior to this
9 time, to wit, at the March term, A. D. 1879, of the Rutland county court, in the county of Rutland, before and by consideration of said county court, was, as appears of record, convicted of selling, furnishing, & giving away intoxicating liquors, against the law in such case made and provided.

J. P. CAIN,
Grand Juror.

Witness:
THOMAS McDERMOT.

The above complaint was exhibited to me this 26 day of December, A. D. 1882.

WAYNE BAILEY,
Justice of the Peace.

STATE OF VERMONT, } ss:
Rutland County, }

To any sheriff or constable in the State, Greeting:

By the authority of the State of Vermont you are hereby commanded to apprehend the body of the said John O'Neil and him have forthwith before subscribing authority, at my office, in said Rutland, that he may answer to the foregoing complaint, and to be further dealt with according to law.

Given under my hand, at Rutland aforesaid, on the 26 day of December, A. D. 1882.

WAYNE BAILEY,
Justice of the Peace.

10 And the officer's return upon said warrant is in the words and figures following—that is to say:

STATE OF VERMONT, } ss:
Rutland County, }

RUTLAND, 26 *December, A. D.* 1882.

Then by virtue of this warrant I arrested the body of the within-named John O'Neil and have him in court as therein commanded.

Attest:

N. S. STEARNS,
Dep't. Sheriff.

And the complaint and warrant being duly returned to said justice, the parties appear on the same 26 day of December, A. D. 1882, before said justice. Said cause was continued from time to time from said 26 day of December, 1882, to this 2 day of March, A. D. 1883, and the respondent come- into court here and for plea says he is not guilty, and thereof puts himself upon the court for trial.

And, after hearing the allegations and proofs of the parties, thereupon it is considered by the court here that said John O'Neil is guilty of four hundred & fifty-seven offences, second conviction, of selling intoxicating liquors in violation of chapter 169 of the Revised Laws of the State of Vermont, and that said John O'Neil pay to the treas-
11 urer of the State of Vermont a fine of nine thousand one hundred & forty dollars and the costs of prosecution here, taxed at $472.96, and be confined at hard labor in the house of correction at Rutland, in the county of Rutland, for the term of one month; and it was then and there ordered by said court that in case said fine and costs should not be paid on or before the expiration of said term of one month's imprisonment the said John O'Neil should be confined, at hard labor, in the house of correction at Rutland, in the county of Rutland, for the further term of twenty-eight thousand eight hundred and thirty-six days, to be computed from the expiration of said term of one month's imprisonment.

And now, within two hours from the rendition of judgment, the said John O'Neil prays for an appeal to the county court next to be holden at Rutland, within & for the county of Rutland, on the second Tuesday of March, 1883, which is granted the respondent, and Pat. Cain, Timothy Carroll, A. Abraham, Auguste Cyr, & J. C. Baker rec-
ognized to the State in the sum of ten thousand dollars, to be
12 levied of their goods & chattels, lands & tenements, if default be made in the condition following:

"If the said appellant shall personally appear before said court and there prosecute this appeal to effect and abide the order of court thereon," then this recognizance to be void; otherwise in full force.

Before me—

W. BAILEY,
Justice of the Peace.

A true copy of record now in my office with the recognizance.
W. BAILEY,
Justice of the Peace.

13 —as by said complaint and appeal will fully appear.

And now, in said March term, A. D. 1883, here cometh the said John O'Neil, and, being brought to the bar here in his proper person, and being demanded concerning the premises in the said complaint, &c., he saith that he is not guilty thereof, and he puts himself on the country.

Therefore let a jury come, &c., who are not, &c.; and the jurors of the jury, being called, come, to wit, William H. Congdon, Edson Holden, Hiram Kilburn, John Baird, George W. Barnard, James Stearns, Allen St. John, E. V. Parker, Charles Martin, C. B. Gibbs, C. Lincoln, and Zebediah Dewey, all good and lawful freeholders of the county of Rutland, who, being duly empanneled and sworn, upon their oath say that the said John O'Neil is guilty of three hundred and seven offences of selling intoxicating liquor without authority and contrary to the laws of Vermont, as of a second conviction for a like offence.

Whereupon, all and singular the premises being seen and
14 by the court fully understood, it is considered by the court here that the said John O'Neil pay a fine of six thousand one hundred & forty dollars to the treasurer of the State of Vermont and the costs of this prosecution here, taxed at $497.96, and stand committed until said sentence be complied with; and, it being ascertained that the costs of commitment of said John O'Neil will be 76 cents, it is further ordered by said court that in case said fine and costs and costs of commitment, aggregating in the whole the sum of $6,638.72, be not paid before the 20 day of March, 1883, at 3 o'clock in the afternoon of said day, the said John O'Neil shall be confined, at hard labor, in the house of correction in Rutland, in the county of Rutland aforesaid, for the term of nineteen thousand nine hundred and fourteen days.

HENRY H. SMITH, *Clerk.*

And now, in the same term, after judgment as aforesaid, before the same court now here, comes the said John O'Neil, by his attorneys afores'd, and files his exceptions to the decision & judgment of said court in the words following:

15 STATE OF VERMONT, } *ss:*
Rutland, }

Supreme Court. January Term, 1884.

STATE OF VERMONT }
vs. } March Term, 1883.
JOHN O'NEIL, Ap't. }

Exceptions.

This is a prosecution in the name of the State of Vermont against

the respondent for a violation of chapter 169 of the Revised Laws of Vermont, on complaint of a town grand juror to a justice of the peace within and for the county of Rutland, and brought to this court by appeal; plea, not guilty, and trial by jury. The complaint is made part of these exceptions.

Upon the trial the State introduced proof that the respondent had admitted for the purposes of this trial the following facts to be true, and the respondent admitted in court for the purpose of the trial that the jury might regard said admission as true, to wit: "The respondent, John O'Neil, of Whitehall, in the county of Washington and State of New York, is a wholesale and retail dealer in wines and liquors at said Whitehall, and has been so engaged in business there for more than three years last past, and that said business by him carried on is a lawful and legitimate business under the laws of the State of New York as conducted by him there.

"That during the last three years the respondent has received at his store, in said Whitehall, three hundred and seven separate and distinct orders by mail, telegraph, and express for specified and designated small quantities of intoxicating liquors from as many different parties residing in Rutland, in the State of Vermont. The orders so sent by express were in the form of a letter addressed to the said John O'Neil at Whitehall aforesaid and the letter attached to a jug, and the jug, with the letter attached, was delivered by said parties to the National Express Company, in Rutland, and charges thereon paid by the parties so sending the order. Orders sent by mail were by letters or postal cards deposited in the post
16 offices at said Rutland, directed to John O'Neil at Whitehall, New York, and postage paid thereon. Orders sent by telegraph were delivered by the sender at the telegraph offices in said Rutland, directed to said John O'Neil, Whitehall, New York, and charges paid by the sender, which orders requested the respondent to send said intoxicating liquors to the parties ordering the same at said Rutland, and in more than one-half the number of instances said orders directed him to send said liquors by express, C. O. D., and in the other instances, where the orders did not specify, it was the intention of the purchaser to have the goods so sent to him.

"It is the usual course of trade for merchants receiving an order from a considerable distance for goods in small quantities to send the same by express, C. O. D., when the order is not from a regular customer or a party of known responsibility.

"That upon the receipt of said orders the respondent has in each case measured out the liquors called for in his order at his store in Whitehall aforesaid, and packed the same in jugs or other vessels and attached to each package a tag, upon which was written the name and address of the party ordering the same, and delivered each package so directed and addressed at Whitehall, aforesaid to the National Express Company, a New York corporation, a common carrier, doing business between New York and Montreal and including the route between said Whitehall and said Rutland, and each of said packages also had upon said tag the name and business card of the respondent, and none of said packages were in any man-

ner disguised, and all of them were sealed with wax. It was not stated on the jugs or tags what they contained.

"The respondent at the same time delivered to said express company a bill of said liquor, which said carrier placed in an envelope, marked C. O. D., which envelope had endorsed thereon, among other things, the following instructions: 'Do not deliver the whole or any part of the goods accompanying this bill until you receive pay therefor. Be careful to notice what money you receive, and, as far as practicable, send the same as received and follow the special instructions of the shipper, if any are given, on the bills. If goods are refused or the parties cannot be found, notify the office from whence received, with names and dates, and await further instructions'—meaning thereby that said express company should receive the amount of said bill upon the delivery of the package to the consignee, and that without payment of said bill the said liquor should not be delivered; that, in the usual and ordinary course of business of said carrier in such cases, the said express company delivered each of said packages to the consignee named upon said tag, at Rutland, and at the same time and concurrently with such
17 delivery received the amount of the said bill in the C. O. D. envelope, the amount of freight for the transportation of said package from Whitehall to Rutland, and the charges for returning said money to the respondent at Whitehall. The express company placed said money for the payment of said bill in the same envelope and returned it to the respondent at Whitehall.

"The respondent did nothing to or with said liquors after the said packages were delivered by him at said Whitehall to said common carrier, and the said several consignees received the same and made payment as aforesaid at Rutland as and under the contract made as aforesaid through their said orders so sent to the respondent at Whitehall.

"That it is the usual and ordinary course of business of said express company, in case goods are refused or the consignees cannot be found, for the office to which goods are sent to notify the office from which they were shipped to notify the consignor of the facts, and the consignor would be consulted and his orders taken and followed as to the disposition of the goods, and this would be the same whether goods were sent C. O. D. or otherwise.

"The respondent gave no special directions as to any of the packages shipped as aforesaid."

The respondent requested the court to instruct the jury that the facts set forth in said admission did not constitute an offense against the statute under the complaint in this cause. The court refused to so hold; to which the respondent excepted.

The respondent also requested the court to instruct the jury that under the facts set forth in said admission they ought to find the respondent not guilty. The court refused to so instruct the jury; to which the respondent excepted.

The court charged the jury that if they believed the facts set forth in said admission to be true, that the same made a case upon which

the jury should find a verdict of guilty against the respondent; to all which the respondent excepted.

The jury returned a verdict of guilty against the respondent of three hundred and seven offenses of selling intoxicating liquor without authority.

After the verdict was returned into court the State's attorney offered in evidence a record of this court, showing that at the March term of Rutland county court, A. D. 1879, this respondent was convicted of selling, furnishing, and giving away intoxicating liquors. This evidence was offered for the purpose of showing a former conviction, as set forth in the complaint. The respondent ob-

18 jected to this evidence upon the ground that the former conviction set forth in the complaint and offered to be proved by the evidence occurred more than three years before the making of the complaint in this cause, and that no evidence was admissible under the complaint to show a former conviction. The court overruled the objection and admitted the evidence; to which the respondent excepted. The record introduced is made part of these exceptions.

The court adjudged upon the verdict and the evidence aforesaid that the respondent was guilty of three hundred and seven offenses of selling intoxicating liquor without authority, as of a second conviction; to which the respondent excepted.

Exceptions allowed, sentence and execution respited and stayed, and cause passed to the supreme court.

W. G. VEAZEY,
Presiding Judge.

19 [Endorsed:] No. 27. Supreme court. January term, 1884. State *vs.* John O'Neil.

20 And, for the trial of the said exceptions of the respondent, it is ordered that sentence be respited and execution stayed, and that this case pass to the supreme court, to be holden at Rutland, within and for the county of Rutland aforesaid, on the first Thursday after the fourth Tuesday of January, A. D. 1884.

HENRY H. SMITH, *Clerk.*

At which day come here into the said supreme court as well the said John O'Neil, by his attorneys aforesaid, as the said State of Vermont, by its attorney.

And, because the court here will advise themselves of and upon the premises before they give judgment thereupon, day is thereupon given to the parties aforesaid here from term to term to the first Thursday after the fourth Tuesday of January, A. D. 1886, for that said court are not advised thereof.

At which day aforesaid, in the present term, before the said supreme court, come the parties aforesaid, by their respective attorneys aforesaid.

Whereupon, the premises being considered, and as well the pro-

ceedings aforesaid and the judgment aforesaid thereupon
21 given, and also the cause for exceptions above alleged, being by the said supreme court here diligently examined and fully understood, it appears to the said supreme court here that the judgment aforesaid is not in anywise erroneous or defective, and that in the proceedings aforesaid there is not any error.

And the said respondent, after said judgment, comes and petitions said court and prays for a writ of error to pass said case to the supreme court of the United States, which was allowed and said case continued for sentence.

HENRY H. SMITH,
Clerk Rutland County Supreme Court.

22 All of which we have caused to be exemplified by these presents and the seal of our said supreme court to be hereunto affixed.

Witness the Honorable Homer E. Royce, chief judge of said supreme court, at Rutland aforesaid, this 30th day of September, anno Domini one thousand eight hundred and eighty-six, and of the Independence of the United States the 111th.

HENRY H. SMITH, *Clerk.*

23 [Endorsed:] State of Vermont, Rutland, *ss.* Supreme court, —— term, 18—. Exemplified copy.

24 Supreme Court of the United States, of the October Term, in the year of our Lord one thousand eight hundred and eighty-six.

JOHN O. NEIL, Plaintiff in Error,
v.
STATE OF VERMONT, Defendant in Error.

And now comes the said John O. Neil, plaintiff in error in the above-entitled cause, by Joel C. Baker, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1st. That the court below held and adjudged that sales of intoxicating liquor in New York by a citizen of that State lawfully was a crime, under the statute law of Vermont, when said liquor so sold was shipped C. O. D. to the purchaser in Vermont by his direction.

2nd. That the court held that a shipment of liquors by common carrier from New York by a citizen of that State to a purchaser in Vermont, under the circumstances of this case, was a crime under the statute of Vermont, which could be punished by the courts of that State.

25 3rd. That the court adjudged that such statute was not in conflict with the clause of the Constitution of the United States which gives Congress power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

4th. That the court adjudged that the plaintiff in error, under the facts of this case, was amenable to the statute law of Vermont

prohibiting the sale, furnishing, and giving away of intoxicating liquors.

5th. That the court held that the construction it gave to said statute, and its application to the facts of this case, is not in conflict with sec. 8 of article 1 of the Constitution of the United States.

And the said John O'Neil prays that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that he may be restored to all things which he has lost by occasion of said judgment.

JOEL C. BAKER,
Attorney for Plaintiff in Error.

26 The United States of America to the State of Vermont, represented in court by P. Redfield Kendall, State's attorney for the county of Rutland, and Walter C. Dunton, attorney and counsel, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of State of Vermont within and for the county of Rutland, wherein John O. Neil, of Whitehall, in the county of Washington and State of New York, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fifth day of February, in the year of our Lord one thousand eight hundred and eighty-six.

HOMER E. ROYCE,
Chief Justice of the Supreme Court of the State of Vermont.

27 On this second day of September, in the year of our Lord one thousand eight hundred and eighty-six, personally appeared N. S. Stearns, a deputy marshal, before me, the subscriber, a notary public, and makes oath that he served the within citation upon the State of Vermont, and also makes oath that he delivered a true copy of the within citation to P. R. Kendall, State's attorney, and Walter C. Dunton, attorney and counsel, as within stated.

N. S. STEARNS,
Deputy U. S. Marshall.

Sworn to and subscribed the fourth day of September, A. D. 1886.

[Seal Joel C. Baker, Notary Public, Rutland, Vt.]

J. C. BAKER,
Notary Public.

Fees, $1.00.

Endorsed on cover: Vermont supreme court. No. 141. John O'Neil, plaintiff in error, *vs.* The State of Vermont. Filed October 11, 1886.